

# NCUA News

## Chairman D'Amours addresses predatory lending forum

August 2000, Number 6

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Chairman Norman E. D'Amours addressed a predatory lending forum July 6, 2000, in Cleveland hosted by Ohio Congresswoman Stephanie Tubbs Jones where participants heard from local victims of unscrupulous lenders and shared information about combating the "piranha" called predatory lending.

"The topic of predatory lending makes fair-minded people both deeply angry and profoundly sad," Chairman D'Amours said. "I share your anger that financial predators are allowed to prosper by taking

advantage of vulnerable people with limited access to financial counseling or to fairly priced financial alternatives."

D'Amours stressed that eliminating predatory lending can have a profound effect on alleviating some of the hardship that exists for many low-income consumers who often find themselves victimized by the exorbitant fees charged for even small consumer loans

Representative Jones scheduled the open forum at the Martin Luther King Library enabling local constituents, who have been victims of predatory lending, to share their experiences in hopes of forewarning fellow citizens of the consequences.

D'Amours said that he is proud to be supervising an industry where the

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American values of financial empowerment, cooperation and volunteerism remain deeply embedded. In today's free-market economy, where the number of unregulated and unlicensed predatory lenders, pawn shops, check-chasing

outlets and rent-to-own stores charging usurious rates grows exponentially, credit unions are a critical alternative with the power to even the playing field for low-income and underserved people he said.



Visit NCUA's extensive web site to get news and numbers about NCUA and credit unions. The web address is [www.ncua.gov](http://www.ncua.gov).

## News briefs

- Fair lending exam procedures released — NCUA sent examiners an instruction in mid-July that established policies and procedures to implement FFIEC interagency fair lending examination procedures. The goal of the new procedures is to ensure compliance with the fair-lending laws, particularly the *Equal Credit Opportunity Act* and *Fair Lending Act*. The exam procedures are available on the FFIEC web site at [www.ffiec.gov/fairlend.pdf](http://www.ffiec.gov/fairlend.pdf)
- Bank Secrecy Act training — Beginning this fall, NCUA compliance specialists will undergo *Bank Secrecy Act* training that covers anti-money laundering. The Federal Financial Institutions Examination Council (FFIEC) developed the training module.
- New AIRES exam introduced — Between March and mid-June 2000, NCUA provided week-long sessions training all federal and state credit union examiners to use the latest, upgraded platform of NCUA's automated examination program, AIRES (automated, integrated regulatory examination system).

## General Counsel opinion letters

The NCUA General Counsel's Office issues opinion letters interpreting agency regulations and policies in response to questions submitted by the credit union community.

Summaries of a few recent opinion letters follow. Secure any of these letters by contacting NCUA's Office of Public & Congressional Affairs, 1775 Duke Street, Alex., VA 22314-3428. All GC opinion letters are placed on NCUA's web site at [www.ncua.gov/ref/opinionletters](http://www.ncua.gov/ref/opinionletters).

**# 00-0508 – Free safe deposit boxes are impermissible for board and committee members** – FCUs may not provide free safe deposit boxes for board of directors or supervisory committee members while credit union members are charged an annual rental fee. The provision of free services is a form of prohibited compensation according to Section 111 of the *Federal Credit Union Act*.

**# 00-0409 – Confidentiality of member's records** – Federal credit unions may release member records to a law enforcement agency without a search warrant if state law permits. What's more, a recent

privacy regulation change that's effective Nov. 13, 2000, expands these provisions to apply to all federally insured credit unions.

**# 00-0540 – Conflict of interest** – The relative of an FCU office manager may sell IRA products to credit union members. The prohibition on receiving compensation from insurance and group purchasing activities applies to a director, committee member or senior management employee or their immediate family members.

**# 00-0440 – Field of membership (FOM) conversion issues** – (1) Communities added as part of an emergency merger remain part of the FOM if the FCU converts to state charter and then converts back to federal charter. (2) NCUA treats state charter conversions the same as an initial application for federal charter. A multiple-common bond application with more than one group over 3,000 may gain a federal charter, but a multiple-group FCU that converts to state and then wishes to return to federal charter would not automatically obtain its old federal charter FOM. (3) The same response applies if a multiple common bond FCU converts to state charter, adds groups over 3,000 and then wants to return to a federal charter.

## NCUA News

NCUA News is published by the National Credit Union Administration, the federal agency which supervises and insures credit unions.

**Norman E. D'Amours, Chairman**  
**Yolanda T. Wheat, Board Member**  
**Dennis Dollar, Board Member**

Information about NCUA and its services may be secured by writing to the Office of Public and Congressional Affairs, or by calling 703-518-6300. News of what is happening at NCUA is available by calling 800-755-1030 or 703-518-6339.

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## Suspicious activity report revised

The five federal financial regulatory agencies, together with the Financial Crimes Enforcement Network (FinCEN), issued a revised *Suspicious Activity Report* (SAR) form June 19, 2000. The form has been streamlined to make filing less burdensome.

Beginning immediately, credit unions that are required to report suspicious activity, according to federal regulations and FinCEN, should use the revised SAR form to file their reports.

Credit unions may continue to use the existing SAR form while their procedures and systems are updated to make use of the revised SAR form. However, beginning Jan. 1, 2001, only the revised

SAR form will be accepted.

Along with the new SAR form, preparation guidance and implementing software are available on NCUA's web site at [www.ncua.gov/ref/SAR/sar.html](http://www.ncua.gov/ref/SAR/sar.html) or directly from FinCEN's website at [www.treas.gov/fincen/forms](http://www.treas.gov/fincen/forms).

With the revised SAR form and software, credit unions will be able to file their report by disk, paper copy, or magnetic tape.

If you have questions regarding the new SAR form, please contact your regional office or John Ianno in NCUA's Office of General Counsel at 703-518-6540, or E-mail [johni@ncua.gov](mailto:johni@ncua.gov)

## Board actions July 13, 2000

### Mid-session operating budget reduced

The NCUA Board approved a mid-year 1.36 percent or \$1.84 million reduction in the agency's operating budget for 2000, primarily due to vacant positions during the first half of the year.

### Loan interest rate ceiling remains 18 percent

The NCUA Board voted to retain the 18 percent loan and line of credit interest rate ceiling for federal credit unions through March 8, 2002.

Analysis found that if the ceiling was allowed to revert to the statutory level of 15 percent, various types of credit would be restricted and the financial condition of a number of credit unions could be adversely affected.

### Final PCA risk-based net worth requirement adopted

The NCUA Board adopted a final rule establishing the risk-based net worth (RBNW) requirement for credit unions that meet the definition of "complex," completing the final component of a system of prompt corrective action required by the *Credit Union Membership Access Act*.

Applicable to all federally insured credit unions, the final rule implements a

three-step process based on eight "risk portfolios" representing risks ranging from negligible to above average.

**Step one** determines if a risk-based net worth (RBNW) requirement is applicable based on a minimum asset size and a minimum RBNW calculation.

**Step two** multiplies the contents of each risk portfolio by one or more corresponding risk weightings to yield a "standard component." The aggregate of the standard component equals the RBNW requirement a credit union must meet.

**Step three** provides an opportunity to substitute up to three standard components, representing above average risk, with a corresponding "alternative component," if it reduces the RBNW requirement measure for the credit union.

The final rule provides an option for credit unions that do not meet the RBNW requirement under the standard calculation or with alternative components.

These credit unions may apply for "risk mitigation credit" to reduce their RBNW requirement.

The RBNW requirement applies only to credit unions with assets exceeding \$10 million and a RBNW calculation exceeding 6 percent. The rule is estimated to apply to 450 credit unions.

Effective January 1, 2001, the final rule will first apply to quarterly filers when filing *Call Reports* for the first quarter of 2001 and will first apply to semiannual filers when filing the mid-year 2001 *Call Report*.

## Charter conversion activity:

### Dana Reading Federal Credit Union

By a two-to-one vote, the NCUA Board approved a community charter conversion for multiple-group, \$59 million Dana Reading Federal Credit Union, Reading, Pa. The Dana Reading FCU was chartered in 1953. With this community charter conversion, the 9,800-member credit union will be able to serve the people who live, work, and worship and attend school, businesses and other legal entities located in Berks County, Pa.

### Patriot Federal Credit Union

By a two-to-one vote, the NCUA Board approved the request of Patriot Federal Credit Union, Chambersburg, Pa., to convert from a multiple-group to a community charter. Patriot FCU is a \$195.6 million credit union, with 43,500 members, that has experienced layoffs in its public and private sector membership base.

With conversion, Patriot FCU becomes a community-based credit union able to serve the people who live, work, worship, or go to school in Franklin County, Fulton County, and the Borough of Shippensburg, Pa., and Washington County, Md.

Votes are unanimous unless otherwise noted.



June 23, 2000 – Board Member Yolanda Wheat (center) and board members of the African American Credit Union Coalition (AACUC) attend a reception hosted by AACUC at their annual conference held in New Orleans, La. The group focuses on mentoring and internships promoting credit union awareness and opportunities for college and university students.

Left to right are Michael Hale, CEO of Andrews Federal Credit Union and president of the AACUC; unidentified attendee; (back row) Hubert Hoosman, Jr., president of Educational Employees Credit Union; (partially shown) Isaac Dickson, board member of Cardina Foothill FCU and board member of AACUC; (right of Mrs. Wheat) Helen Godfrey, CEO of Shreveport Federal Credit Union; Jennifer Gore, CUNA & Affiliates; Sheila Montgomery, president of 1<sup>st</sup> Choice Credit Union; and Bert J. Hash, Jr., president/CEO of Municipal Employees Credit Union.



## Legislative update

# Bills passed and considered



With its shortened election-year calendar and a five-week August recess, little time remains for Congress to act on legislation. Just one of the required 13 appropriations measures has been signed into law, so consideration of additional appropriation bills will dominate the remainder of this Congressional session. NCUA's Office of Public and Congressional Affairs continues to monitor progress on all legislation of interest to credit unions and the agency. A recap of some of these issues follows.

## VA-HUD appropriations (CDCU revolving loan fund/CLF borrowing limit):

The VA-HUD Appropriations bill, H.R. 4635, sets a borrowing ceiling of \$3 billion on the NCUA Central Liquidity Facility. While this is less than the CLF borrowing cap in the *Federal Credit Union Act* that is in effect for fiscal year 2000, it represents a substantial improvement over the initial draft of the bill, which imposed a borrowing cap of \$600 million.

For the first time, the bill also allocates money for technical assistance. An additional \$1 million appropriation for the Community Development Revolving Loan Fund designates \$350,000 for technical assistance grants and \$650,000 for loans.

The House approved H.R. 4635 on June 21 and the Senate VA-HUD Appropriations Subcommittee has not yet scheduled a date for mark-up of the Senate bill.

## E-signatures:

President Clinton signed the E-signature legislation into law June 30. The new law gives E-signatures the same legal standing as written signatures for contracts and other documents. It also allows for electronic transmission of required consumer disclosures if the consumer consents.

## Bankruptcy, H.R. 833/S. 625:

The informal House/Senate conference continues attempts to find a compromise. It is expected that any final bill would allow credit union members in bankruptcy to reaffirm their debts without providing supporting financial disclosures required for other lenders.

On June 13 and June 29, President Clinton wrote to House and Senate leaders threatening to veto the legislation. Senate Majority Leader Trent Lott's (R-MS) comments about the chances of enacting a bankruptcy bill have become increasingly pessimistic over the last several weeks.

## Member business loans to non-profit religious groups, H.R. 4701:

Rep. Ed Royce (R-CA) introduced the Faith-Based Lending Protection Act, H.R. 4701 on June 20. This bill, co-sponsored by five Republicans and five Democrats, would exempt credit unions serving non-profit religious organizations from the 12.25% of assets cap on member business loans. Further action is unlikely this year.

## Deposit insurance increase:

Rep. Charlie Gonzalez (D-TX) has introduced a bill to require NCUA and fellow federal banking agencies to study the effects of increasing the deposit insurance limit from \$100,000 to \$200,000.

House Banking Financial Institutions Subcommittee Chair Marge Roukema (R-NJ) has announced her view that Congress should consider an increase in the deposit insurance limit.

However, due to time constraints and the opposition of Senate Banking Committee Chairman Phil Gramm (R-TX), Federal Reserve Chairman Alan Greenspan and Treasury Secretary Lawrence Summers, enactment of a deposit insurance increase is extremely unlikely this year.

## Interest on Fed Reserves, H.R. 4209/S.576:

The House Banking Committee approved H.R. 4209 on May 17, which would permit the Federal Reserve to pay interest on reserves posted on transaction accounts. The Senate Banking Committee included a similar provision in a regulatory relief bill it approved on March 10, 1999.

## Antitrust Improvements Act, S. 1854, S. 1764, H.R. 4194

A 1976 antitrust law requires pre-merger notification to the Department of Justice or the Federal Trade Commission (FTC) if the value of the acquiring entity exceeds \$100 million, the value of the acquired entity exceeds \$10 million, and the size of the proposed transaction (the amount of assets being transferred) exceeds \$15 million.

Several recent credit union mergers may have triggered the notification requirement, which also requires paying a substantial filing fee.

Senate bill S. 1854 would increase the size of the transaction threshold from \$15 million to \$35 million, which would make the pre-merger notification requirement less likely to apply to credit union mergers.

House bill H.R. 4194 would increase the size of the transaction threshold to \$50 million. An even better outcome would be a total exemption from the merger review requirement affecting other financial institutions.

PACA has submitted proposed amendment language to the Senate staff to exempt credit unions from FTC review and is in the process of arranging meetings with House staff to discuss this issue.

## About investments

# CDs – What you are really buying?

Long-term, zero-coupon certificates of deposit (CD) are inappropriate for most credit unions. When they are purchased, credit unions often receive below market rates and a substantial part of their payment goes to the broker, not the CD issuer, in the form of an excessive commission. A simplified example of this transaction follows.



1. A credit union pays an inflated price of \$60,000 to a broker for a zero coupon CD from an issuer that is worth only \$50,000. The CD matures in 10 years, August 1, 2010.
2. The credit union records a CD worth its payment price \$60,000.
3. The broker sends the \$50,000 issue amount to the safe-keeper. The broker pockets the \$10,000 difference. Only the \$50,000 is insured, not the excess \$10,000 used for broker commissions.

4. The safe-keeper records the credit union as beneficial owner of a \$50,000 CD. The safe-keeper sends the \$50,000 payment to issuer.

The safe-keeper's statement to the credit union indicates it owns a CD that, at maturity July 14, 2010, will pay the CD par amount of \$100,000. The statement usually does not report the \$50,000 issue amount. The credit union may be able to sell the CD through the broker prior to maturity. However, the broker will set the price and a significant loss may occur. What's more, if the issuer fails, the insured amount is calculated on the \$50,000 issue amount, not the amount paid to the broker.

A credit union should compare CD rates and other investment alternatives using bond equivalent yield and insist the broker disclose the issue amount on the confirmation statement. In most cases, these long-term, zero-coupon CDs are inappropriate investments.

## Updating asset-liability management analysis

NCUA has provided examiners with new draft procedures to use in evaluating a credit union's asset-liability management. The procedures will be piloted during the remainder of the year and plans are to then incorporate them into AIREs 2000 examination procedures.

Special training is underway to prepare examiners for this change.

The detailed procedures and evaluation tools will be made available to credit unions on the NCUA website when they are completed. Credit unions will be alerted when the procedures and evaluation tools are available on the web.

# Brokered deposit alert

NCUA issued a press release June 6 alerting credit unions to potential problems with brokered deposits that may raise safety and soundness concerns.

Citing an example, San Clemente Securities (SCS), formerly known as San Clemente Financial Group, Inc. (SCFGI) or San Clemente Financial Group (SCFG), is a registered broker dealer engaged in the business of brokering certificates of deposit and other investment products. The owners of SCS also own United Custodial Corporation (UCC). UCC conducts business in the same location as SCS and is the custodian for many certificates of deposit sold by SCS.

Recent Federal Deposit Insurance Corporation (FDIC) examinations have uncovered potential safety and soundness concerns in connection with a bank's

participation in a financial package marketed as a "reverse arbitrage."

In this transaction, SCS sold long-term, zero-coupon certificates of deposit to the institution. It appears a substantial broker's fee was extracted from the amount invested in the zero-coupon certificates, reducing the certificates' value to below the contracted amount.

The purchase of these investments is often linked to an agreement by the bank to obtain short-term, below-market-rate deposits from SCS.

NCUA has been working with the FDIC and other regulators on this issue and will be providing details in an upcoming *Letter to Credit Unions*. Additional guidance is offered in this and the July *About Investments* column of the NCUA NEWS newsletter.

SCS has a history of problems with federal and state regulatory agencies. NCUA issued a *Cease and Desist Order* July 10, 1997, against SCFGI and SCFG and three of its principals, which remains in effect. Nine additional state banking and securities authorities have taken administrative action against SCS.

## Upcoming NCUA board actions expected

- Rule change on true sale accounting, transfer of control for participations and securitizations is expected at the September meeting.
- Proposed rule on foreign branching by federally insured state-chartered credit unions.
- Comments are due by August 14 on a proposed privacy rule and guidelines for safeguarding member information.

## Strategic planning

# Planning is imperative to reach goals

The challenges credit unions face from competition, technology, regulation and the increasing number of financial service-delivery channels are greater than ever. NCUA's new six-year strategic plan recognizes the many challenges credit unions, and especially smaller credit unions, face. The NCUA strategic plan emphasizes how important it is for credit unions to develop a viable business plan to successfully meet these challenges.

Examiners are assisting credit unions to successfully meet challenges by reviewing their business planning process during examinations. The agency also plans to provide examiners with additional planning guidance and training.

Business planning is a dynamic management tool enabling the credit union to see where it has been, understand where it is and plan where it wants to go. A viable business planning process keeps the credit union aligned with the desires of membership and is more competitive. It encourages reflection and introspection.

The first step in developing a business plan is an assessment of the environment in which the credit union operates, including an assessment of its niche and members' needs. This normally includes

obtaining an evaluation by an outside facilitator. A thorough evaluation will provide a focus for the credit union management and board by measuring comparative statistics so the credit union can determine how competitive it actually is. During this process, the credit union should establish a vision of where it wants to be in 3-to-10 years.

The facilitator will bring to a planning session a detailed assessment of the credit union's strengths, weaknesses, opportunities, and threats. This will help credit union officials better understand where their credit union is in relation to its primary competition. Once the group understands its strengths, weaknesses, opportunities and threats, it can start

brainstorming ideas for the future. These ideas will be reduced to three or four potential goals for the next year.

Ideally, a business plan should be re-evaluated at the same time each year. Evaluating the business plan on a consistent basis will lead to operational improvements and growth. Generally, it takes three years for a business planning process to realize meaningful results.



## NCUA News

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